The Constitution of the Confederate States; Its Influence on The Union It Sought to Dissolve.[1]

JUDGE ANDREW J. COBB
President of the Georgia Historical Society

The Convention of 1787, which framed the Constitution of the United States, had its origin in the recognized inefficiency of the government under the Articles of Confederation. In these articles each state expressly retained its sovereignty and independence. The only sovereign power that could be exercised by the Confederation was in connection with foreign relations, and this was hampered by the inability of Congress to legislate without the concurrence of the states.

There was neither an executive nor a judiciary, and Congress could not reach either the person or property of a citizen of a state, except through the constituted authorities of the state, and Congress had no power to compel a state to act. A voluntary league between sovereign states was all that the Articles of Confederation created. The surrender of any part of the sovereignty of a state was negligible.

The single creative act of the Convention of 1787 was the bestowal upon the central government, organized by a league of sovereign states, of the power to operate directly, without the concurrence of the state, upon the person and property of the inhabitants thereof. In all else the Convention followed with modifications that which had existed and was existing.

The government was divided into its three departments—legislative, executive and judicial—as had been in England, in all the colonies, and all the states since the day of independence. The rights of individuals, as recognized in the four charters of English liberty—the Great Charter, the

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Petition of Right, the Habeas Corpus Act, and the Bill of Rights, were preserved to the full extent applicable in a republican form of government.

As the central government was to have the right to enter the domain of a state, it was necessary for the preservation of the rights of the state, that the powers of the central government should be within defined limits. That the central government might not be hampered in the exercise of its delegated powers, it was also necessary that there should be limitations upon the power of the states. The Constitution, therefore, sets forth the powers of the central government and the limitations upon the power of the states. Thus the central government has all the power that is delegated, either in express terms or by reasonable implication. The states have all power that has not been delegated or which has not been denied to the states. A grant of power, couched in the clearest and most precise terms that ingenuity and scholarship may devise, will rarely if ever close the door to construction.

A difference of view as to the extent of the powers of the central government was coincident with the establishment of the government.

The question as to the tribunal to settle such difference also arose. The contention of some was that as the Union was the creature of the States, each acting independently, each state was the final arbiter as to the powers delegated and the powers reserved. Others contended that the central government was the arbiter on all questions of power arising under the Constitution. These differed among themselves, some contending that each of the three departments was independent of the other two, while some maintained that the legislative and executive departments were bound by the conclusions reached by the judicial department.

The right of a state to nullify an act of the Congress, and remain a member of the Union, was the doctrine asserted by some. The right of a state to dissolve its relation to the Union, when the central government exceeded its powers, was maintained by others.

There were those who denied both the power to nullify and the authority to secede. One state only in its organized capacity committed itself to the doctrine of nullification. The power of the general government was so exercised as to render its act of nullification ineffectual. Seven states, each in its organized capacity, committed themselves to the doctrine of secession. Delegates elected by these states assembled at Montgomery and framed a constitution providing for a Union under a central government composed of seven states and other states that might thereafter be admitted conformably to the terms of the constitution.

"The Constitution was modelled on that of the United States and followed it with rigid literalness." Alabama and Georgia instructed their delegates to form "a government upon the principles of the Constitution of the United States." President Davis in his inaugural address said, "We have changed the constituent parts, but not the system of our government. The Constitution founded by our fathers is that of these Confederate States in their exposition of it."

The promoters of the new government were as much, if not more, attached to the principles of the Constitution of the United States as the framers of the Constitution of the United States were to the four great charters of English liberty. The changes that were made merely embodied in the organic law of the new government, the opinions and claims of constitutional right of the Southern statesmen. The political thought of the South as to the true interpretation of the Constitution found its expression in the Constitution of the Confederate States. The preamble recites that "each state is acting in its sovereign and independent character" and the purpose is "to form a permanent federal government."

Certain powers were subjected to express limitations which merely declared the construction which had been contended for as to similar grants of power in the Federal Constitution.

The general welfare clause was omitted from the taxing grant. Bounties from the Treasury and extra compensation to contractors, officers and agents were prohibited.

No duties or taxes on imports could be levied to promote or foster industries.

Internal improvements, except in connection with river navigation, were prohibited, and the cost of such improvement was to be levied on the navigation facilitated. The slave trade was prohibited. The right of property in slaves was recognized and guarded.

All these changes merely carried into effect the interpretation which had been placed by the framers of the new instrument upon the provision in the Constitution of the United States relating to the different subjects.

The only departure from the terms of the Constitution of the United States was in instances where an experience of seventy years seemed to demonstrate that a change was wise, and all these changes related to administrative features.

A seat upon the floor of either house of Congress might be granted to the head of an executive department, with the right to discuss any measure relating to the department. This was to bring the legislative and executive departments in closer touch, and give to the executive department the privilege of a direct hearing, either in advocacy or opposition to pending measures which had to be carried into effect by the department. The President could remove at pleasure the head of an executive department and persons connected with the diplomatic service. Experience had demonstrated that the administration of the government was at its best when the President was allowed a free hand in the choice, both at home and abroad, of those officers who should be in sympathy with the plans and policies which the President had the right to formulate and follow in the exercise of the executive functions which the Constitution had vested in him. The right—the unhampered right to remove an unsympathetic or obstructive adviser or representative, was indispensable. All other civil officers could be removed for cause, but the removal and reasons therefor were required to be reported to the Senate. No person rejected by the Senate could be appointed to the same office during the ensuing recess of the Senate.

The President had the power to disapprove particular items in an appropriation bill, which would then become law only when passed over the veto thus expressed. This was to prevent appropriations which on their merits could not command the requisite vote from being carried through by a combination of members interested in appropriations which lacked the necessary number of votes. The disapproval of any particular item or items would not prevent other items which were approved from becoming effective.

The President was elected for six years and was not re-eligible. The unfortunate, undesirable, and sometimes deplorable consequences resulting from the incumbent of the office of President using or permitting to be used all the prestige, influence and patronage of the office to secure a renomination or re-election, had even in that day become manifest.

A court for the investigation of claims against the government was to be established, and no claim was to be paid until its justice was judicially established.

Jurisdiction of suits between citizens of different states was withheld from the Federal Courts. This was to prevent defendants from being harassed with suits in places remote from their residence. The right of the litigant, whether resident or non-resident, to have the Supreme Court ultimately to pass on questions arising under the Constitution, laws and treaties was not impaired by the provision referred to.

Any Federal judge or officer resident or acting solely within the limits of a state could be impeached by a two-thirds vote of both houses of the legislature thereof.

This was an assertion of state's rights in its last analysis. Direct amenability of the Federal officer to the authorities of the state of his official activities would make both appointing power and the officer more careful.

All electors in each state were required to be citizens. Senators were to be elected at the session of the Legislature immediately preceding the beginning of the term of service.

Export duties were allowed with the concurrence of two-thirds of both houses of Congress. These were prohibited

by the Constitution of the United States. It was deemed wise to open this source of Federal revenue with the restriction mentioned.

States divided by rivers, or through which rivers flowed, could enter into compacts for improving their navigation, and consent of Congress was not required to render such compacts valid, as is the case with the Federal Constitution.

No discharge in bankruptcy could affect debts contracted before the passage of the Bankrupt Act. This was the state's rights expression of a much mooted question in other days. No state was allowed to pass a law impairing the obligation of a contract. The Federal government was the creature of the states. Therefore, the creature could not do that which the creator was prohibited from doing. Such was the argument.

A two-thirds vote of each house of Congress was necessary to appropriate money, unless it was asked and estimated by a head of department, and submitted to Congress by the President, and a like vote was necessary when the purpose was to pay the "expenses and contingencies" of Congress.

This seems to be the first recognition in this country of the budget system.

Every law must relate to one subject only, and that must be expressed in the title of the law.

This was to remedy three evils—first, the incorporation of "riders" on bills relating to matters wholly foreign to the subject of the bill; second, what is commonly called "log rolling," that is, the insertion of a number of subjects in one bill some of which could not be passed standing alone, and third, legislation in the body of the bill attention to which was not called by the title of the bill.

The notorious "Yazoo Act" of this state is the conspicuous example of how a law authorizing the sale of a large area of public land could be passed under the apparently harmless title, "A bill to be entitled an act for the relief of the soldiers in the late war."

New states could be admitted, but only by a two-thirds vote of each house, the Senate voting by states.

The Constitution could be amended only by a convention of the states, which could be demanded by three states in their several conventions. The convention could propose only the amendments suggested by the states making the call for the convention, and the amendments so proposed must be ratified by two-thirds of the states.

"The Confederate Constitution was the embodiment of the state rights and republican construction of our organic law."

Its distinguishing features were:

First: Guarantees against anti-slavery;

Second: Prevention of the enlargement of the powers of the Federal government;

Third: Safeguards against the taxing power.

The Montgomery convention was representative not only of the best political thought of the South, but of the entire Union.

The spirit of the Constitution framed at Montgomery, disconnected with the subject of slavery, still lives, and its wisdom has been and is being vindicated.

The budget system is now in the law of several states, advocated in many others, and will soon be in the law of the United States.

The Court of Claims, originally established in 1855, with its enlarged jurisdiction, is a recognition of the principle that the justice of claims against the government should be judicially established.

The established policy of the several states and of the general government is at this day against the payment of extra compensation to public officers and contractors; and the sentiment of the country is against the payment of bounties from the public treasury.

The soundness of the inhibition against the use of the taxing power to promote and foster industries has met with judicial recognition in Loan Association vs. Topeka, 20 Wallace, 655, where Mr. Justice Miller says: "To lay with one

hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals, to aid private enterprises and build up private fortunes, is none the less robbery because it is done under the forms of law and is called taxation."

The rules of both the House and Senate each declare in substance the principle that bills should relate to one subject only and that should be expressed in the title of the bill.

Many states, Georgia included, now declare that voters must be citizens. The right of the denizen, the half naturalized foreigner, to vote is rapidly disappearing, even if it has not already disappeared.

The acquittal of President Johnson on the charge of having violated the law in the removal of Secretary of War Stanton was a declaration that the President had the right to remove a member of the Cabinet, and it must be remembered that this acquittal came notwithstanding an Act of Congress which declared that the President could not remove such officer without the consent of the Senate. The socalled "Tenure of office act" was in effect declared unconstitutional in the judgment rendered.

Senators are now elected by the people and not by the Legislature, and the law provides that they shall be elected at the general election immediately preceding the term of service.

The appearance of heads of departments before congressional committees when the affairs of the department are under consideration, which is now so common, may in time develop into the larger privilege of appearing before the whole house.

A referee or referees in a state to advise the President as to appointments of Federal officers whose activities are to be within the state is a mild, very mild, recognition that the people of the state should be consulted on these matters.

There has been for some years and is now a recognition that the Federal Courts should have jurisdiction of cases between citizens of different states only where the amount involved is large or the questions grave.

It is interesting to note that some of the provisions of the Constitution of the Confederate States appear in the Constitution of this state.

The Constitution of Georgia of 1777, allowed inhabitants having certain qualifications to vote. The Constitution of 1798 allowed only citizens to vote, and such was the provision in the Constitution of 1861 and 1865. The Constitution of 1868 allowed citizens and those who had legally declared their intention to become citizens to vote.

The present Constitution limits the right to vote to citizens.

The provision that the purpose of the law must be expressed in the title first appeared in the Constitution of 1798. The tradition is that this was inserted in the Constitution by Governor James Jackson to prevent the recurrence of a "Yazoo fraud."

This provision appears in all subsequent constitutions.

It would seem, therefore, that the provision on this subject in the Constitution of the Confederate States was a Georgia contribution to that instrument.

The rule that a law should have only one subject first appears in the Constitution of 1861 and reappears in every later constitution. This is also true as to the provision that a person rejected by the Senate shall not be appointed to the same office during the ensuing recess; and also as to the right of the Governor to disapprove particular items in an appropriation bill.

The government formed at Montgomery did not perpetuate its existence, and slavery has ceased to exist, but the political wisdom of the convention survives and is still operative in the governmental affairs of the Union and the States. When the origin of measures of governmental reform, now existing or that may hereafter appear, is sought, the Constitution of the Confederate States should not be overlooked as a source. When prejudice is conquered, and calm judgment is pronounced, it will take its place among the historic documents of the country.